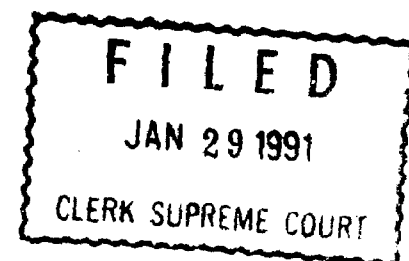


IN THE COURT OF APPEALS OF IOWA

No. 0-450 / 89-1784



IN RE THE MARRIAGE OF PENNY JO CONNER AND
CHARLES RODNEY CONNER

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Upon the Petition of

PENNY JO CONNER, n/k/a PENNY JO PIATT,

Appellant,

And Concerning

CHARLES RODNEY CONNER,

Appellee.

Appeal from the Iowa District Court for Scott County,
John A. Nahra, Judge.

Petitioner mother appeals the trial court's denial of
an application for modification of the primary care
provision of a decree of dissolution. **AFFIRMED.**

M. Leanne Tyler, Davenport, for appellant.

Michael J. McCarthy of McCarthy & Lammers, Davenport,
for appellee.

Considered by Donielson, P.J., and Hayden and Habhab,
JJ.

DONIELSON, P.J.

Penny Jo Piatt, formerly Penny Jo Conner, and Charles Conner were married in July 1975. Two children were born of the marriage: Rodney Shane Conner (Shane), born May 6, 1976, and Amanda Spring Conner, born November 22, 1978. A decree of dissolution was entered, terminating the parties' marriage in February 1984. Charles was awarded sole custody of the children. At the time of the dissolution Penny was unemployed and living in Louisiana. Charles had a steady job in Davenport.

Penny filed this application for modification in February 1989. Since the dissolution, Penny has become a registered nurse and is employed at the Veteran's Hospital in Iowa City. She has also married a retired man. Charles has been on strike for about a year and receives unemployment compensation. Penny alleged Charles' housekeeping practices were adverse to the best interests of the children.

The district court found there had been a substantial change in circumstances since the entry of the decree that warranted changing the sole custody granted to Charles to joint custody. Consequently, the trial court also enunciated guidelines for custody and visitation. The trial court did not find the change in circumstances warranted a change in the primary physical placement of the children, however. The district court also ordered Penny to pay child support.

Penny appeals. She claims the court erred in: (1) changing the visitation schedule; (2) not placing the primary physical care of the children with her; and (3) not ordering a home study.

Scope of Review. Our review of this equity action is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7). Prior cases have little precedential value, and we must base our decision primarily on the particular circumstances of the parties presently before us. In re Marriage of Weidner, 338 N.W.2d 351, 356 (Iowa 1983).

Visitation. The original dissolution decree awarded Charles sole custody of the children. The district court modified the dissolution decree to the extent it awarded the parents joint custody of the children. As a result of this modification, the trial court set out guidelines for minimum visitation and of the rights of the parents sharing joint custody.

Penny contends the district court erred in changing the visitation schedule because neither party sought a change in visitation. She states the previous visitation schedule worked well and there was no reason to limit her scheduled visitation. We find this contention is without merit.

We conclude the modification in the custodial provision of the decree authorized the district court's concomitant

award of "reasonable visitation." We note the visitation guidelines set forth in the district court's ruling provide minimum standards for "reasonable visitation." Nothing in the district court's ruling prohibits the parties from continuing their present practices concerning visitation and, in light of the close proximity of all involved, we find nothing that would curtail the liberal visitation now occurring. We urge the parties to continue to encourage the children to have maximum contact with both parents. We do not modify this aspect of the ruling.

Primary Physical Care of the Children. As noted previously, the district court refused to modify the primary physical placement of the children. Penny argues the district court should have given her the primary physical care of the children. She contends Shane has been having problems in school, and Penny feels she is better able to help Shane overcome those problems. She also alleges Charles' poor housekeeping practices are detrimental to the children.

We first note that Amanda appears to be faring quite well in her present environment. Amanda was described by Dr. Jo Ann Milani, a psychologist, as "very complete, reliable, assertive." Amanda is on the honor roll in school and plays first chair violin.

The party seeking a change in the custodial provision of a dissolution decree has a heavy burden. This burden stems from the principle that once custody of a child has

been fixed, it should be disturbed only for the most cogent reasons. In re Marriage of Mikelson, 299 N.W.2d 670, 671 (Iowa 1980).

To change the custodial provision of a dissolution decree, the applying party must establish by a preponderance of the evidence that conditions since the decree was entered have so materially and substantially changed that the children's best interests make it expedient to make the requested change. In re Marriage of Frederici, 338 N.W.2d 156, 158 (Iowa 1983). The party seeking to take custody from the other must prove an ability to minister more effectively to the children's well being. Id. See also In re Marriage of Gravatt, 371 N.W.2d 836 (Iowa App. 1985).

This court concludes Penny has failed to carry her burden of proof. Penny has not established that Shane's difficulties in school are a change in circumstances since the decree was entered. Rather, the evidence presented at the hearing established that Shane has always had difficulties with school. These difficulties existed at the time Penny agreed to the children residing with their father and at the time the dissolution decree was entered. Furthermore, the evidence presented suggests that if any heightening of these problems occurred, it coincided with Shane's adjustment to middle school and the present dispute concerning primary physical care. The evidence presented fails to establish the difficulties relating to Shane are permanent in nature.

In its ruling on Penny's application for modification, the district court stated,

There is no question that this Court would hope that after this hearing the Respondent would become a better housekeeper. However, the condition of the home or housekeeping abilities of the Respondent alone are not so deficient so as to indicate the placement or custody of these children should be taken from the Respondent.

Like the district court, we encourage Charles to "become a better housekeeper." But we do not find the housekeeping abilities of Charles so deficient as to warrant a change in the placement of the children.

Both parents obviously love their children and are concerned for their children's welfare. Both parents are encouraged to continue involving themselves in their children's lives and endeavors. Both parents are also encouraged to cooperate with one another to promote the children's emotional and physical well-being.

In sum, Penny has failed to establish the requisite conditions for a modification of the primary physical care provision of the dissolution decree. We affirm the district court's decision not to transfer the placement of these children with their father.

Home Study. Penny sought a home study of the conditions of Charles' home pursuant to Iowa Code section 598.12(2). The court denied the application for a home study. Penny claims the trial court erred in denying the application, contending a home study would have aided the trial court and would have been in the best interests of the children.

Section 598.12(2) provides:

The court may require that the department of human services or an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children.

(Emphasis added). The language of section 598.12(2) is permissive and does not mandate that the district court order a home study. We conclude the district court acted well within its discretion in denying Penny's request.

AFFIRMED.